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09/752,564	01/03/2001	Hirofumi Sakaue	32405W061	9797

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Smith, Gambrell & Russell, LLP  
Beveridge, DeGrandi, Weilacher &  
Young Interllectual Property Group  
1850 M Street, N.W. (Suite 800)  
Washington, DC 20036

[REDACTED] EXAMINER

COHEN, CURTIS A

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3634

DATE MAILED: 12/28/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. <b>09/752,564</b>	Applicant(s) <b>Sakaue et al</b>
	Examiner <b>Curtis Cohen</b>	Art Unit <b>3634</b>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1)  Responsive to communication(s) filed on Jan 3, 2001

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

#### Disposition of Claims

4)  Claim(s) 1-13 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-13 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

15)  Notice of References Cited (PTO-892)

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2 and 4

18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

19)  Notice of Informal Patent Application (PTO-152)

20)  Other: \_\_\_\_\_

Art Unit: 3634

## **DETAILED ACTION**

### *Claim Objections*

Claim 1 is objected to because of the following informalities: Claim 1, line 3, the term -- is-- should be inserted between “gate” and “pivotally”. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 10, the positive recitation of the rear gate in the phrase “a hinge arm provided at the upper end of said rear gate” is indefinite. It is unclear whether or not the hinge gate is a required element of the claim. The preamble of the claim indicates that the rear gate is not a required element of the claim. However, in line 10, the gate is clearly a required element. Clarification is required. Applicant might consider inserting the phrase --for attachment-- after the term “provided” in line 10 to clarify the problem.

Art Unit: 3634

Similarly, claim 2, line 2, the positive recitation of the vehicle is indefinite because the vehicle was functionally recited, (i.e., not a required element of the claim), and line 2 of claim 2 is now requiring the vehicle.

Claim 3, the phrase “a clutch means for disconnecting” is indefinite because it is unclear whether or not applicant is reciting “a clutch” or “a means for disconnecting.”

Claim 4, line 5, the recitation of “operating means” is indefinite because it is unclear to which element this limitation refers since it is not inclusive of “the power source means” as set forth in claim 1.

Claim 4, line 7, it is indefinite to which element the claim refers when stating “control means.” Are the “hinge arm” and “gas stay” included in this means? Further, how does the control means control the opening speed of the gate? Is there a signal sent to the motor?

Similarly, in claims 6 and 7, how does the control means control the speed of the gate? Is the voltage regulated?

Claims 8, 9 and 11, how does the control means “judge” a fully open and closed position. Are there multiple signals sent to the control means? How are the signals evaluated?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

Art Unit: 3634

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371<sup>©</sup> of this title before the invention thereof by the applicant for patent.

Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Dettling et al 6,055,776. Dettling et al teaches a power source 36 connected to a slider 70. A hinge arm is taught by member 42. A connecting rod 68 connects the slider to the hinge arm. A mounting base is taught by the member 46 to which bolt 66 is attached. A gas stay is taught by member 32. A solenoid clutch is taught by member 44.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dettling et al in view of Hellinga et al #5,982,126. Dettling et al teach the invention as discussed in the rejection above. Dettling et al fail to disclose the position detecting means and the control means. Hellinga et al teaches that it is known in the art to provide a vehicle door with several kinds of position detecting means (see column 6, lines 15, 40) and a control means 7 and a processing means 10 and a memory 9. Hellinga et al provides these elements to improve the

Art Unit: 3634

safety features of the door by learning the force needed to close the door along the entire locus of points from the opened to the closed position as described in the General Description of the Invention. For this reason, it would have been obvious to one having ordinary skill in the art, at the time of applicant's invention, to provide Dettling et al with a safety system as taught by Hellinga et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Cohen whose telephone number is (703) 308-2106.

The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.



C. Cohen

December 21, 2001